

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No.163 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-****HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus

JYOTI MARKETING PROJECTS LTD. - Respondent(s)

Appearance :

MR MANISH R BHATT for Applicant(s) : 1,
 NOTICE SERVED for Respondent(s) : 1,

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**and****HONOURABLE MS.JUSTICE H.N.DEVANI****Date : 11/10/2005****ORAL ORDER****(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)**

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following two questions under Section 256(1) of the Income-tax

Act, 1961 (the Act), at the instance of the Commissioner of Income-tax:

1. Whether, the Appellate Tribunal is right in law and on facts in deleting the disallowance in respect of contribution towards gratuity fund under the gratuity scheme of the life Insurances Corporation on the ground that if a claim does not fall under any of the sections 30 to 36, it would be allowable under Section 37(1) ?
 2. Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to ascertain the exact amount of interest pertaining to the period prior to commencement of the relevant accounting year and restrict the disallowance only to that extent and further directing the remaining amount of interest to be allowed as deduction.
2. The Tribunal has also referred the following question at the instance of the assessee:
- “Whether, on the facts and in the circumstances of the case, the Appellate

Tribunal was right in law in holding that the assessee will not be entitled to deduction in respect of interest pertaining to period from 1/5/1982 to 31/12/1992 out of the total interest of Rs.12,05,897 paid to Jyoti Ltd.?

3. Mr.Bhatt has very fairly invited attention to order dated 13th September, 2005 made by this Court in Tax Appeal No.11 of 2005 and Tax Appeal No.12 of 2005 in the case of Commissioner of Income-tax Vs. Gala Family Trust to point out that question No.1 stands concluded by the said order. It is also pointed out that in the present case, the gratuity fund has been approved by the Commissioner of Income-tax vide order dated 5th February, 1993 w.e.f. 1st November, 1984, but respondent-assessee has preferred appeal against the said decision before the Central Board of Direct Taxes claiming that approval should be accorded with effect from the date of application.
4. It is not necessary to set out the facts and contentions in detail as the issue stands

concluded by a decision of this Court rendered in case of Commissioner of Income-tax Vs. Gala Family Trust (supra) wherein this Court has held that once the payment is made directly to Life Insurance Corporation of India it was an expenditure incurred wholly and exclusively for the purposes of business of the assessee as required by Section 37 of the Act, coupled with the fact that there was no dispute as to incurring of the expenditure, there would be no question of law, much less a substantial question of law in the circumstances. Therefore, applying the reasoning in the aforesaid order made by this Court, question No.1, at the instance of the revenue, is answered in the affirmative i.e. in favour of the assessee and against the revenue.

5. It is necessary to take note of the fact that the Assessment Year is 1984-85 and the relevant accounting period is a period of 15 months from 1st January, 1983 to 31st March, 1984 and as such

the granting of approval w.e.f. 1st November, 1984 would not be applicable for the year under consideration.

6. In so far as question No.2 at the instance of the revenue is concerned, it is an admitted fact that the Tribunal has relied upon its own order rendered in case of M/s. Nima Limited and made the reference only because reference was made in case of Nima Limited. Mr.Bhatt has fairly invited attention to decision rendered by this Court on 5th July, 2005 in Income Tax Reference No.229 of 1993 in case of Commissioner of Income-tax Vs. Nima Limited wherein this Court has upheld the order of the Tribunal. In the circumstances, following the ratio laid down by this Court in the case of Commissioner of Income-tax Vs. Nima Limited (supra) question No.2, at the instance of the revenue, is answered in the affirmative to the extent of the question regarding allowance of interest is concerned. The part of the question which

challenges the direction to the Assessing Officer to ascertain the exact amount of interest can never be a question of law and hence, is not answered. It is merely a consequential direction to the decision to grant deduction of interest. Accordingly, question No.2 is answered in favour of the assessee and against the Revenue.

7. In so far as question referred at the instance of the assessee is concerned, the same is left unanswered in absence of prosecution on behalf of the assessee.
8. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

*Bhavesh**